

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DANIEL ALWEISS,

Plaintiff,

v.

CITY OF SACRAMENTO; MARIO LARA;  
SHANNON BROWN; CHRIS CONLIN;  
UNNAMED CITY OF SACRAMENTO  
POLICE OFFICERS 1-3; LARRY K.  
JOYNER; ST. PAUL CHURCH OF GOD-  
CHRIST; FIRST STEP COMMUNITIES-  
THE GROVE; PG&E; and DOES 1-25,

Defendants.

No. 2:21-cv-02095-WBS-DB

ORDER RE: MOTION TO DISMISS

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Plaintiff Daniel Alweiss brought this action against the City of Sacramento (the "City"), various Sacramento Parks Department and City officials, and other organizational and individual defendants challenging, in primary part, defendants' alleged failure to enforce camping, sanitation, and other ordinances at a park adjacent to plaintiff's property. (See

1 Compl. (Docket No. 1).)<sup>1</sup> Plaintiff alleges that these failures  
2 have enabled the development of an encampment of homeless  
3 individuals in the park, in turn causing a decline in the value  
4 of his property, preventing him from building an assisted living  
5 facility for seniors, and leading to attacks by encampment  
6 residents. (Id. at ¶¶ 22-33.) He brings eight claims under 42  
7 U.S.C. § 1983, alleging a variety of constitutional violations,  
8 and eight claims under California law. (Compl.) The City now  
9 moves for dismissal of claims one (equal protection), two (state-  
10 created danger), three (procedural due process), four  
11 (substantive due process), five (privileges and immunities), six  
12 (retaliation), and nine (inverse condemnation) in plaintiff's  
13 complaint. (Mot. (Docket No. 9-1).)

14 I. Due Process & Privileges and Immunities Claims (Counts II-V)

15 The court heard oral argument on plaintiff's motion  
16 directly following argument on another case, Railroad 1900 LLC v.  
17 City of Sacramento, 2:21-cv-1673 WBS DB, which has been related  
18 to this one. (See Docket Nos. 5, 18.) Railroad 1900 presents  
19 similar claims against the City, based primarily upon the same  
20 alleged failure by the City to enforce state and local laws as  
21 against homeless individuals near the plaintiff's property. The  
22 court today issued an Order in that case dismissing the  
23 plaintiff's constitutional claims. See 2:21-cv-1673, Docket No.  
24 27 ("Railroad 1900 Order").

25 The bulk of plaintiff's allegations in this case are in  
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27 <sup>1</sup> Defendant PG&E has since been dismissed from the action  
28 pursuant to a stipulation by the parties. (Docket Nos. 12-13.)

1 relevant respects identical to those presented in Railroad 1900.  
2 He alleges that he owns property adjacent to Johnston Park, where  
3 the City "has allowed squalor residential structures" to develop  
4 and "ha[s] knowingly allowed . . . severe blight and nuisance  
5 conditions" to form as a result of homeless individuals  
6 inhabiting the park. (Compl. at ¶¶ 16-17, 22.) He further  
7 alleges that he and his neighbors have notified city officials  
8 about these issues and that the City has nonetheless failed or  
9 refused to remediate them. (Id. at ¶¶ 24, 26.) Instead, he  
10 alleges, the City has "allowed [the encampment] to exist in  
11 direct contravention of its own Municipal Code." (Id. at ¶ 52.)  
12 More specifically, he alleges that city officials "have  
13 intentionally not applied . . . municipal, county and state laws  
14 related to camping, vagrancy, fires, trash, sewage, park  
15 operation, explosions, fires near natural gas storage facilities,  
16 public property, wood piles, etc., despite plaintiff and many  
17 residents . . . asking for such laws to be enforced in Johnston  
18 Park." (Id. (capital typeface omitted).) Accordingly, he  
19 challenges the City's "intentional efforts not to apply such  
20 laws" and contends that "Sacramento landowners and taxpayers are  
21 entitled to have the City . . . follow [its] own laws." (Id. at  
22 ¶¶ 57, 60.)

23           These allegations make clear that, through this action,  
24 plaintiff primarily challenges the City's alleged failure to  
25 enforce state and local laws against the homeless individuals  
26 residing in Johnston Park and their property. However, as  
27 explained in the court's Railroad 1900 Order, a plaintiff lacks  
28 standing to sue in federal court to challenge a city's failure to

1 enforce the law against others.<sup>2</sup> See Allen v. Wright, 468 U.S.  
 2 737, 739-40, 754 (1984); Linda R.S. v. Richard D., 410 U.S. 614,  
 3 619 (1973); In re Att'y Disciplinary Appeal, 650 F.3d 202, 203-04  
 4 (2d Cir. 2011); Gutierrez v. City of Carson, LA 10-cv-7627 JAK  
 5 (CWx), 2011 WL 7129239, at \*7 (C.D. Cal. Dec. 16, 2011).

6 Accordingly, to the extent that plaintiff's second, third,  
 7 fourth, fifth, and ninth claims in this action challenge the  
 8 City's alleged non-enforcement against other individuals, those  
 9 claims fail for lack of standing.

10 However, plaintiff's claims in this action differ from  
 11 those in Railroad 1900 in that beyond challenging the City's  
 12 alleged non-enforcement of laws in Johnston Park, plaintiff also  
 13 alleges that in June of 2018, City officials trespassed onto and  
 14 began digging on his property to install new water lines, without  
 15 his permission. (Compl. at ¶ 18.) He alleges that in April of  
 16 2019, in response to his objections to the trespass and digging,  
 17 the City asserted it already had other trespassing pipes running  
 18 through his property and demanded he grant it an uncompensated  
 19 easement for those pipes. (See id. at ¶¶ 18, 20.) Plaintiff  
 20 also alleges that, in May of 2021, three unidentified Sacramento  
 21 police officers cut a chain and lock that secured a sliding door  
 22 at an entrance of his property; damaged the door; drove onto his  
 23 property without his permission; and left the gate unlocked,

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24  
 25 <sup>2</sup> Although lack of standing is not raised in the City's  
 26 motion to dismiss, standing is essential to the existence of  
 27 subject matter jurisdiction, an issue which may be raised sua  
 28 sponte. Fed. R. Civ. P. 12(h)(3) ("If the court determines at  
 any time that it lacks subject-matter jurisdiction, the court  
 must dismiss the action."); Snell v. Cleveland, Inc., 316 F.3d  
 822, 826 (9th Cir. 2002).

1 allowing "vagrants" to dump trash on his property and vandalize  
2 his landscaping. (Id. at ¶¶ 36-38.)

3           These allegations serve as partial bases for  
4 plaintiff's third, fourth, and fifth claims. (See id. at ¶¶ 64,  
5 70, 75.) And unlike the allegations pertaining to the alleged  
6 non-enforcement of the law in Johnson Park, these challenge  
7 alleged affirmative conduct by the City and its officials. Thus,  
8 to the limited extent that plaintiff's third, fourth, and fifth  
9 claims challenge alleged conduct pertaining to trespasses onto  
10 plaintiff's land by City officials, the cutting of his lock and  
11 chain, and the damage to his gate, plaintiff has standing to  
12 bring these claims.<sup>3</sup> However, because no such allegations are  
13 present in plaintiff's second and ninth claims, the City's motion  
14 will be granted as to those claims.

15 II. Equal Protection (Count I)

16           In this action, as in Railroad 1900, plaintiff alleges  
17 that the City has violated his right to equal protection by  
18 enforcing the relevant state and local laws in other parts of the  
19 city while declining to do so near his property, thereby  
20 selectively enforcing the laws in ways that discriminate against  
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22 <sup>3</sup> In its motion, the City does not address these  
23 allegations in seeking dismissal of plaintiff's third, fourth,  
24 and fifth claims. (See Mot. at 9-13.) Accordingly, its motion  
does not support dismissal of those claims, to the extent that  
plaintiff has standing to bring them.

25           The City also argues that plaintiff may not bring a  
26 claim against it under the Privileges and Immunities Clause of  
Article IV of the United States Constitution. (Id. at 12-13.)  
27 However, plaintiff makes no such claim, but rather asserts a  
28 claim under the Fourteenth Amendment's Privileges and Immunities  
Clause. (Compl. at ¶¶ 73-76.) Accordingly, the City's arguments  
on this issue are inapposite.

1 residents of poorer or less politically connected neighborhoods.  
2 (See Compl. at ¶ 41); Railroad 1900 Order, at 3-5. In this case,  
3 however, plaintiff also alleges that the City has done so on a  
4 racially discriminatory basis based on a theory of disparate  
5 impact, alleging that a majority of the residents in plaintiff's  
6 neighborhood are "black or brown," whereas the City allegedly  
7 does enforce the laws in neighborhoods with other demographic  
8 compositions. (Compl. at ¶ 41.) Plaintiff further alleges that  
9 he is a "class of one" who has been singled out by the City for  
10 non-enforcement of the law near his property. (Id. at ¶ 43.)

11 As explained in Railroad 1900, equal protection claims  
12 alleging selective and discriminatory enforcement of the laws may  
13 proceed where a plaintiff alleges that the defendant "decided to  
14 enforce the law against [the plaintiff]," but not against other  
15 similarly situated individuals, "on the basis of an impermissible  
16 ground such as race, religion or exercise of constitutional  
17 rights." See Railroad 1900 Order, at 11-13; Lacey v. Maricopa  
18 Cnty., 693 F.3d 896, 922 (9th Cir. 2012) (quoting United States  
19 v. Kidder, 869 F.2d 1328, 1336 (9th Cir. 1989)) (alteration  
20 adopted); United States v. Armstrong, 517 U.S. 456, 464-65  
21 (1996). Such a claim will not lie, however, where a plaintiff  
22 does not allege that he has himself been the subject of the  
23 challenged enforcement. See Railroad 1900 Order, at 12-13  
24 (citing Lacey, 693 F.3d at 922; Allen, 468 U.S. 755). Because  
25 plaintiff here has not alleged that he has been the subject of  
26 any enforcement by the City, he lacks standing to bring an equal  
27 protection claim premised upon selective enforcement. See id.

28 Further, plaintiff's disparate impact theory of equal

1 protection liability fails for the additional, related reason  
2 that he has not alleged that he is himself a member of the  
3 protected class that is the subject of the alleged  
4 discrimination. Although plaintiff alleges that his neighborhood  
5 is "majority black and brown" and has been designated for non-  
6 enforcement on that basis, he does not allege that he is himself  
7 "black [or] brown" and therefore a member of the asserted  
8 protected class. (See Compl. at ¶¶ 40-42); Warth v. Seldin, 422  
9 U.S. 490, 499 (1975) ("[E]ven when the plaintiff has alleged  
10 injury sufficient to meet the 'case or controversy' requirement,  
11 this Court has held that the plaintiff generally must assert his  
12 own legal rights and interests, and cannot rest his claim to  
13 relief on the legal rights or interests of third parties.").

14 Plaintiff's class-of-one theory also fails for the  
15 additional reason that he does not allege that he is, in fact, a  
16 class of one. An equal protection claim based on a class of one  
17 may lie "where the plaintiff alleges that [ ]he has been  
18 intentionally treated differently from others similarly situated  
19 and that there is no rational basis for the difference in  
20 treatment." Vill. of Willowbrook v. Olech, 528 U.S. 562, 564  
21 (2000). "Where a plaintiff is making a class-of-one claim, the  
22 essence of the claim is that only the plaintiff has been  
23 discriminated against, and therefore the basis for the  
24 differential treatment might well have been because the plaintiff  
25 was unique . . . ." Scocca v. Smith, 11-cv-1318 EMC, 2012 WL  
26 2375203, at \*5 (N.D. Cal. June 22, 2012) (emphasis added).

27 Here, plaintiff alleges that it is "[p]laintiff and his  
28 neighbors" who have been treated differently from other

1 Sacramento residents by virtue of the alleged non-enforcement in  
2 Johnston Park, "which serves [plaintiff's] community." (Compl.  
3 at ¶¶ 43(b), 45 (emphasis added).) The complaint thus alleges  
4 differential treatment not of plaintiff alone, but of the broader  
5 community surrounding the park. Plaintiff's neighbors who also  
6 reside near the park and are subject to the same alleged harmful  
7 conditions are therefore "similarly situated" to plaintiff, yet  
8 plaintiff does not allege that he has been singled out for  
9 treatment different from them. See Scocca, 2012 WL 2375203, at  
10 \*5. Because plaintiff does not allege that only he has been the  
11 subject of the alleged discrimination, his class-of-one theory of  
12 equal protection liability also cannot succeed. See Del Rio v.  
13 Cnty. of Santa Barbara, 12-cv-5587 GW (AGRx), 2012 WL 13013247,  
14 at \*5 (C.D. Cal. Aug. 30, 2012) (rejecting class-of-one claim  
15 where plaintiffs failed to allege that they alone were subjected  
16 to challenged conduct).

17 Therefore, plaintiff's first claim, alleging violation  
18 of equal protection, must also be dismissed.

19 III. Retaliation (Count VI)

20 Plaintiff's sixth claim alleges unlawful retaliation  
21 under the First Amendment. (Compl. at ¶¶ 77-84.) Specifically,  
22 plaintiff alleges that in March of 2019, after objecting to City  
23 employees trespassing onto and digging on his land, he applied  
24 for a conditional use permit to build "an assisted living  
25 facility for low-income seniors" on his property. (Id. at ¶¶ 18-  
26 19, 80-81.) He states that he subsequently refused to grant the  
27 City an uncompensated easement for pipes already running through  
28 his property. (Id. at ¶ 20, 81.) And he further alleges that,



1 based on this refusal and on his repeated complaints to the City  
2 about the conditions in Johnston Park, the City retaliated  
3 against him by refusing to process his conditional use permit  
4 application, including by setting it for a hearing. (Id. at  
5 ¶¶ 82-83.)

6 Unlike plaintiff's allegation that the City retaliated  
7 against him by refusing to enforce state and local laws against  
8 homeless individuals in Johnston Park, this allegation does not  
9 suffer from the same standing defect because it does not  
10 challenge a failure by the city to enforce the law against  
11 others. Accordingly, to the extent that plaintiff alleges the  
12 City retaliated against him by refusing to process his permit  
13 application, he has standing to bring his retaliation claim.

14 In its motion, the City argues that plaintiff's  
15 retaliation claim must fail for the separate reasons that he  
16 fails to (1) identify the constitutionally protected activity he  
17 engaged in that prompted the alleged retaliation or (2) allege  
18 facts plausibly suggesting that the City's inaction regarding his  
19 application was in response to that activity. (Mot. at 14.)  
20 These arguments lack merit. First, by providing allegations  
21 regarding the easement dispute and regarding plaintiff's  
22 complaints about Johnston Park directly before alleging that  
23 plaintiff "engaged in constitutionally protected activity," the  
24 complaint makes clear that the assertedly protected activity  
25 consists of plaintiff's alleged refusal to grant an uncompensated  
26 easement and complaints about the park. (See Compl. at ¶¶ 79-  
27 83.) Second, by alleging that the City declined to process an  
28 application to develop his property in retaliation for his

1 refusal to grant an easement for part of that same property, as  
2 well as for his complaints about the City's handling of a park  
3 directly abutting that property, plaintiff's allegations  
4 plausibly suggest a connection between his actions and the City's  
5 given the significant overlap in subject matter.

6 IV. Identity of "City Defendants"

7 With respect to many of plaintiff's claims, the  
8 complaint frequently uses the term "CITY DEFENDANTS" to describe  
9 the entities or individuals plaintiff alleges are responsible for  
10 the alleged acts and omissions challenged in the complaint. (See  
11 Mot. at 5, 12-13.) The City argues that this term is  
12 impermissibly vague because the complaint does not clarify to  
13 whom the term refers. (See id.) The court agrees that this term  
14 is likely inadequate to enable the entities and individuals  
15 comprising "CITY DEFENDANTS" to adequately defend themselves in  
16 this action.<sup>4</sup>

17 The portions of plaintiff's third, fourth, and fifth  
18 claims for which plaintiff has standing do not rely on the term  
19 "CITY DEFENDANTS" in alleging trespass and destruction of  
20 plaintiff's property. (See Compl. at ¶¶ 64, 70, 75.)  
21 Accordingly, the use of "CITY DEFENDANTS" does not merit

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22 <sup>4</sup> Plaintiff appears to acknowledge that the meaning of  
23 "CITY DEFENDANTS" is unclear but asserts that "this issue . . .  
24 has been clarified in the meet and confer process." (See Opp. at  
25 6 (Docket No. 14).) However, on a motion to dismiss, the court  
26 "may not consider any material beyond the pleadings," Lee v. City  
27 of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001), save for  
28 "documents attached to the complaint, documents incorporated by  
reference in the complaint, or matters of judicial notice,"  
United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). It  
therefore cannot consider what may have occurred during the meet  
and confer process in deciding the instant motion.

1 dismissal of plaintiff's third, fourth, or fifth claims. The  
2 portions of plaintiff's sixth claim alleging the City retaliated  
3 by refusing to process his permit application, however, do rely  
4 on the term "CITY DEFENDANTS," (see id. at ¶¶ 81-83), which  
5 prevents the court from evaluating whether plaintiff has  
6 adequately alleged a causal connection between his conduct and  
7 the alleged retaliation. See O'Brien v. Welty, 818 F.3d 920, 932  
8 (9th Cir. 2016) (citation omitted); Blair v. Bethel Sch. Dist.,  
9 608 F.3d 540, 543 (9th Cir. 2010). Accordingly, the court will  
10 dismiss plaintiff's sixth claim with leave to amend.

11 IT IS THEREFORE ORDERED that defendants' motion to  
12 dismiss be, and the same hereby is, GRANTED IN PART and DENIED IN  
13 PART as follows:

- 14 • GRANTED as to plaintiff's first and second claims;
- 15 • GRANTED as to plaintiff's third, fourth, and fifth  
16 claims, to the extent that such claims challenge the  
17 City's failure to enforce state and local laws in  
18 Johnston Park; DENIED as to these claims in all  
19 other respects;
- 20 • GRANTED as to plaintiff's sixth and ninth claims.

21 Plaintiff has twenty days from the date of this Order to file an  
22 amended complaint, if he can do so consistent with this Order.

23 Dated: May 26, 2022



24 WILLIAM B. SHUBB  
25 UNITED STATES DISTRICT JUDGE  
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